

Record,  
502.

1891.

Inft. Page,

172.

Interference.

No. 14,846.

Albert K. Keller

= vs =

Henry Hoeschel

= vs =

H.R. Conington = And =

Thomas Conington vs

James F. Gilliland = And =

Albert K. Keller.

Coin Operated

Phonograph.



Mar. 26-91.

1891.

ATTORNEYS.

A. K. Keller

70 Beading<sup>g</sup> & Beading<sup>g</sup>,  
N. Y. City

Asso. Foster & Freeman,  
City.

Thos. Ewing Jr.

# 155 Broadway N.Y. City <sup>atq</sup> for assignee  
Adm. Vm. M. Dorsey, Jr.

90 A. K. Keller, N.Y. City  
Asso. Foster & Freeman,  
City

H. Hoeschen

70 J. H. Rutter, Jr.,  
City.

Thos. Ewing Jr. Atty for assn

155 B'way N.Y. City

Asso Vm. M. Dorsey City

Courington & Courington,

40 H. B. Brown,

City.



(2-070.)

INDEX.

INTERFERENCE.

No. 14846.

Hocutt

v.

Conyngton & Con-  
yngton v. Gilliland  
& Keller.

SUBJECT-MATTER:

Coin Operated  
Phonograph



- 1 Nov. 21-90 Declaration. Prelim. hearing Jan. '91
- 2 Dec 20 " Motion by Gilliland & Keller to dissolve & to suspend proceedings <sup>pending decision on motion</sup>
- 3 " " " Letter of transmittal & request for separate hearing
- 4 " 27 " Letter to Commissioner
- 5 " 31 " Motion dismissed
- 6 Jan 2<sup>nd</sup> 1891. Stipulation to extend times for filing statements
- 7 " " " Letter of transmittal
- 8 " 3 " Prelim. hearing set for Feb 6-91
- 9 " 5<sup>th</sup> " Statement of Conyngham & Conyngham
- 10 " " " Letter to " "
- 11 " 31<sup>st</sup> " Statement of Hoersch
- 12 " " " Letter to " "
- 13 Feb 3<sup>rd</sup> " Request of the P. Ex. for suspension
- 14 " 5 " " Interference suspended
- 15 Mar. 26 " " Re-declaration. Prel. hearing May 18-91
- 16 May 18<sup>th</sup> " Statement of Keller
- 17 " 19<sup>th</sup> " Letter to " "
- 18 Sept. 7- " " Letter to Keller extending prel. hearing to Oct. 1-91
- 19 " " " " Gilliland & Keller
- 20 " 3 " " Judgment against Hoersch & Conyngham & Conyngham <sup>Conyngham</sup>
- 21 Oct. 7. Letter to Gilliland & Keller <sup>Limit of appeal Sept 24-91</sup>
- 22 " 12 " Motion by Keller to amend his statement
- 23 Dec 8 " " " granted
- 24 Feb. 1 "92. Letter of consolidation with #14,848 and #14,847
- 25 " " " Times set for taking testimony. Hearing May 16-92
- 26 May 9. Decided in favor of Keller. Limit of appeal overruled
- 27
- 28



Int. 14,846 paper No. 4



Hoschere

v.

Coungston & Coungston

v.

Gilliland & Keller

Letter to Comm-  
missioner.

Dec. 27-90.

See instructions of  
Commr. in Case No,  
14,847 paper No. 3,



UNITED STATES PATENT OFFICE,

Washington, D.C. December 27, 1890.

Hon. C.E. Mitchell,

Commissioner of Patents.

Sir:-

I beg leave to call your attention to a series of interferences, in each of which a motion has been made on behalf of one of the parties, to wit: Gilliland & Keller, that the interference be dissolved, on the ground that all of the claims in the application of said party have been included in the interference by the primary examiner, whereas the said party contends that some, at least, of said claims ought not to be included. Accompanying said motions is a letter from their attorney, in which it is stated that "notice is made and a hearing asked ex parte, and it is submitted that the opposing parties to each of the above interferences are not entitled to notice of these motions, the same relating only to questions in issue between the Patent Office and "Gilliland & Keller".

It may not be that this is "such irregularity in declaring the same as will preclude a proper determination of the question of priority", but it would seem to be one that the party in all justice would be entitled to have corrected, and if such motions should not be transmitted to the primary examiner prior to the approval of statements, it might deprive the parties of their rights



under Rules 105 and 106. Under the well known practice of the office motions properly brought under Rule 122 are not transmitted to the primary examiner prior to the approval of preliminary statements, unless it shall be apparent upon the face of the record that a decision on the motion would be binding upon all of the parties. This does not seem to be such a case. As there is no express provision in the Rules for a case of this kind, the examiner of interferences respectfully calls your attention hereto and requests that he may be instructed as to what action he should take in the premises.

*Walter Johnson*  
Examiner of Interferences.



M.A.M.

2-067

DEPARTMENT OF THE INTERIOR

United States Patent Office,

U.S. PATENT OFFICE

DEC 31 1890

Washington, D. C.

December 30th, 1890.

IN RE INTERFERENCE

Hoeschen v. Conyington & Conyington No. 14,846.

Gilliland & Keller.

Before the Examiner of Interferences.

Coin Operated Phonograph.

Gilliland & Keller, Care Alfred W. Kiddle, No. 38 Park Row, N.Y. City

Your motion for dissolution was received and filed on Dec. 20th, instant, as was also your letter accompanying the same in which you ask for an ex parte hearing upon said motion. As such motion did not seem to comply with the Rules of Practice, the examiner of interferences referred the matter to the Com'r of Patents, and asked to be instructed in the premises, which fact explaining the delay in taking action thereon. On December 29th, instant, the Commissioner determined the matter as follows:

"There is an appearance of equity in the contention of the applicants that a hearing should be had ex parte, but such a hearing cannot be given without a violation of the rule providing for notice in contested cases. And, besides, I am of opinion that the considerations based upon the desirability of avoiding all unnecessary delays in interference proceedings are weightier than those derivable from the considerations suggested by the examiner of interferences. If there



is any relief for a case embraced in the request for instructions it does not consist in permitting ex parte hearings before the primary examiner upon a motion to dissolve."

The motion is therefore dismissed from further consideration by the examiner of interferences.

*Walter Johnson*  
Examiner of Interferences.

Intf. No. 14,846 Paper 5.

*Wagachan  
Levinington &  
Levinington et  
al*

*Motion dismissed*

*Dec. 31-90*

*Recorded Vol. 34, p. 485.*



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Keller vs. Hoersch  
vs.  
Conyngton & Conyngton  
vs.  
Gilliland & Keller  
STATEMENT OF  
Hoersch

Filed Jan'y 31, 1891.  
Approved Light 1, 1891.  
N.F.C.



## PRELIMINARY STATEMENT.

1 *H. R. & T. Conyngton*  
 2 *H. R. & T. Conyngton*  
*vs.*  
*J. F. Gilliland & A. K. Keller*  
*vs.*  
*H. Hoeschen*

Interference in the United States  
 Patent Office.

Preliminary Statement of Henry Hoes-  
 chen.

Henry Hoeschen, Of Omaha, in the County of Douglas,  
 and State of Nebraska, being duly sworn, doth depose and say  
 that he is a party to the interference declared by the Com-  
 missioner of Patents November 14th, 1890, between Henry Hoes-  
 chen's application for letters patent filed November 3rd,  
 1890, Serial Number 370,128, for Coin controlled Phonograph  
 Service and, the application of H. R. and T. Conyngton of  
 Galveston, Texas, for Coin Operated Phonograph, and the lat-  
 er application of the said Conyngtons for the same entitled  
 invention, and the application of J. F. Gilliland of Adrian,  
 Michigan, and A. K. Keller of New York, New York, for Auto-  
 matic Attachment for Phonograph's, that he conceived the in-  
 vention set forth in the declaration of interference on or  
 about the 12th, day of Spetember, 1890, that no drawings of  
 the invention in issue have been made, that on or about the  
 12th, day of September, 1890, he first explained the inven-  
 tion to others, that no model showing such invention was  
 made, that he embodied his invention in a full sized machine,  
 which was completed about the 15th, day of September 1890,  
 and that on the Fifteenth day of September 1890



the said machine was successfully operated in the office of the Nebraska Phonograph Company in the New York Life Insurance Company's Building in the City of Omaha, County of Douglas, and State of Nebraska, and that he has since continued to use the same, and that he has manufactured others for use and sale.

Henry Hoersch

Subscribed in my presence and sworn to before me this

20<sup>th</sup> day of December 1890.

W. N. Williams

Notary Public.



Intf. No. 14846, Paper No. 12.

Hoeschen vs  
Conyington, and  
Conyington vs  
Gilliland & Keller,

Case "F."

Acknowledgment of receipt of  
statement of Hoeschen,

Jan'y 31<sup>st</sup> 1891.



Duplicate

(2-064a.)

All communications should be addressed to  
"The Commissioner of Patents,  
Washington, D. C."

DEPARTMENT OF THE INTERIOR,

United States Patent Office,

Washington, D. C. January 31<sup>st</sup> 1891.

In the matter of the interference of

Horschen vs Conyngton Before the Examiner of Interferences,  
and Conyngton vs Gilliland  
and Keller Case "F"

SIR:

You are hereby informed that the preliminary statement of

Henry Horschen has

been received and filed.

By direction of the Commissioner:

Very respectfully,

Samuel Lunge

Chief Clerk.

Henry Horschen  
Care

J. W. Ritter  
City.



Recd. of F

Room No. \_\_\_\_\_  
 Communications should be addressed to  
 "The Commissioner of Patents,  
 Washington, D. C."

DEPARTMENT OF THE INTERIOR,

## United States Patent Office,

Washington, D. C., Mar 14, 1891

## EXAMINER OF INTERFERENCES.

An interference is found to exist between the following cases, and in respect to the invention therein specified, to wit:

## CASES.

1. A. K. Keller, of New York City, for  
attachments for Oper-  
ating Phonographs, filed Jan. 31, 1891; Ser. No. 379,824,

whose attorney is Redding & Kiddle of New York City  
assoc. Foster & Freeman, of Washington, D.C.

2. H. Horschman, of Omaha, Neb., for  
Automatic Coin-controlled  
Phonograph Service, filed Nov. 3, 1890; Ser. No. 370,128,

whose attorney is F. W. Ritter, Jr., of Washington, D.C.

3. H. R. & J. Conyngham, of Galveston Tex., for  
Coin Operated Phonographs, filed Oct. 6, 1890, S. N. 367,204,  
July 12, 1890; Ser. No. 358,590.

whose attorney is J. L. Browne, of Washington, D.C.

## INVENTION.

5. J. F. Gilliland and A. K. Keller, of Adrian,  
Mich., and New York City respectively,  
 for Automatic Attachments for Phonographs,  
 filed Feb. 17, 1890, S. N. 340,687, whose at-  
 torney is A. W. Kiddle, of New York City,  
 with Foster & Freeman, of Washington, D.C.  
 as associates.



The issue remains the same as before and covers substantially claims 34, 44, 45, 47, 48, 49, 51, 52, 53, 54, 55, 56, and 57 of Keller's application; claim 3 of Horschman's application; claims 3 and 5 of <sup>the</sup> Conyngton's later application; claims 1 and 2 of the Conyngton's earlier application; and claims 1 to 33, inclusive, of Gilliland and Keller's application.

Simpson  
1<sup>st</sup> Asst Exr.

W. L. Hughmough,  
Examiner

Intf. No. 14846 Paper No. 15

Keller v. Horschman  
v.  
Conyngton and Conyngton  
v. Gilliland and Keller.

Dec. - Declaration of Interference of  
Mar. 26<sup>th</sup> 1891.  
Time for filing statement set  
for May 18<sup>th</sup> 1891.



16.

*Keller vs. Hoeschen*  
VS.  
*Corryngton & Corryngton*  
vs.  
*Gilliland & Keller*

STATEMENT OF

*Keller*

Filed *May 18,* 18*91.*  
Approved *Sept 1,* 18*91.*  
*C.F.C.*



UNITED STATES PATENT OFFICE.

In the Matter of the Interference .  
declared between the application of : INTERFERENCE  
ALBERT K. KELLER, Serial No. 379,824 :  
filed January 31, 1891 and other ap- : No. 14,846.  
plications. :

SUBJECT: ATTACHMENTS FOR OPERATING PHONOGRAPHS.

PRELIMINARY STATEMENT OF ALBERT K. KELLER.  
-----

ALBERT K. KELLER, being duly sworn deposes and says  
that he is the applicant in the above named application Serial  
No. 379,824 and is a party to the above entitled Interference;  
that he conceived the invention set forth in the declaration  
of Interference herein in or about the month of July 1887;  
that he made drawings illustrating said invention in or about  
the month of July 1887; that he first disclosed said inven-  
tion to others in or about the same month of July 1887; that  
he made a full-sized working model or operating machine which  
embodied said invention in or about the month of November 1887  
which was successfully used.

*Albert K. Keller*

Subscribed and sworn to before me this 16 day of May 1891.

*Charles G. Mather*  
*Notary Public*  
*W. L. G.*

250



14 14846-16, 22,

Keller

VS.

bo. Giltland & Keller  
G.

STATEMENT OF

Keller

Filed Oct. 12, 1891.  
Approved Dec. 22, 1891.

C. F. C.

UNITED STATES  
OCT  
12  
1891

U.S. PATENT  
OCT 12 1891  
OFFICE



United States Patent Office.

In the matter of the Interference  
declared between the application of  
Albert K. Keller, Serial No. 379,824  
filed January 31, 1891 and other  
applications.

Interference  
No. 14,846.

Subject: Attachments for Operating Phonographs.  
Amended Preliminary Statement of Albert K. Keller.

Albert K. Keller, being duly sworn deposes and  
says that he is the applicant in the above named applica-  
tion Serial No. 379,824 and is a party to the above entitled  
Interference, and that he conceived the invention set forth  
in the declaration of Interference herein in or about the  
month of July 1887; that he made drawings illustrating said  
invention in or about the month of July 1887; that he first  
disclosed said invention to others in or about the same  
month of July 1887; that he made a full-sized operating ma-  
chine which embodied said invention in or about the month  
of November 1887 which was successfully used; that machines  
embodying said invention were manufactured under his direc-  
tion in or about the month of November 1889; which were  
successfully used and operated and that from that date to  
the present time the work of manufacturing and introducing  
throughout the United States machines embodying the said  
invention has been prosecuted vigorously and continuously  
with his cooperation.

*Albert K. Keller*

Subscribed and sworn to before me

this 10<sup>th</sup> day of October 1891.

*Paul Gorham*

*Notary Public*  
*Brooklyn Co., N. Y.*  
FILED IN N. Y. CO.



Memorandum: In relation to amended preliminary statements filed by O. S. Kelley in Thermisgator, Phonograph Infringements, on the 13<sup>th</sup> of Oct., Infringements 14846<sup>V</sup> & 14848<sup>V</sup>.

The consents of all the parties to these cases were obtained to the filing of the new statement. The written consents being filed therewith on Oct. 13, 1891. Since that date no new parties have been added. It therefore is requested that the Office accept the statements so filed, or if necessary by filed grant permission for them to be properly filed.

Infringements 14847<sup>V</sup> & 15098<sup>V</sup>

The written consents of all the parties to these cases were filed with the amended preliminary statements on Oct. 13, 1891. Owing probably to a confusion in the Patent Office, ~~these~~ the receipt of these was not acknowledged and on Nov. 2, 1891, the infringements were declared with new parties. The Office is therefore requested to accept these statements, made for time.

Infringements 15092<sup>V</sup>, 15095<sup>V</sup>, 15096<sup>V</sup>, 15097<sup>V</sup>, and 15099<sup>V</sup>.

In these cases the preliminary statements were ~~made~~ made accompanied by a suitable written affidavit as consents of all ~~for~~ parties to the filing of the amended.



ed statements could not be obtained. No  
action was taken by the Office on these  
motions and subsequently the interferences  
were redeclared and new parties added. It is  
requested that the Examiner of Interferences take  
up these motions and grant leave to file  
the said statement.

Interference 15094

In this case through inadvertence  
no affidavit was filed as was the case in  
Interferences 15092, 15095 etc., to which in  
other respects it is similar. If the Examiner  
will consider the motion a suitable af-  
fidavit will be filed as to the reason for  
filing the amended statement

Respectfully submitted  
W. H. Dancy  
Ass. Atty. for Keller